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FILED
Superior Court of California
County of Los Angeles

OCT 17 2017

Sherri B. Carter, Executive Assistant/Clerk
By Raul Sanchez Deputy

9 Attorneys for Defendants, SILVERWOOD PROPERTIES, INC. and KENNETH HOWARD
10 SHAPIRO

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **IN AND FOR THE COUNTY OF LOS ANGELES**

13 DAVID A. GLAZER, an individual,

14 Plaintiff,

15 vs.

16 CHENEY ADRIENNE SHAPIRO; CHENEY
17 SHAPIRO DESIGNS 401K; CHENEY SHAPIRO
18 DESIGNS; RESOURCEFUL DEVELOPMENTS,
19 INC.; RICHARD JUDSON WILLIAMS;
20 SILVERWOOD PROPERTIES, INC.; KENNETH
21 HOWARD SHAPIRO; PODLEY ASSOCIATES
22 REALTORS; LINDA DARLINGTON SEYFFERT;
23 SEISMIC SAFETY, INC.; EDUMUND J. SYLVIS;
24 KEN LAMARR COMPTON; AND DOES 1
25 THROUGH 250.

26 Defendants.

Case No.: BC669741

Complaint Filed: July 25, 2017

Assigned to Honorable Richard E. Rico
Dept.: 17

**REPLY OF DEFENDANTS
SILVERWOOD PROPERTIES, INC.
AND KENNETH HOWARD SHAPIRO
TO PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION TO STRIKE
ALL ALLEGATIONS PERTAINING TO
PLAINTIFF'S ENTITLEMENT TO
PUNITIVE DAMAGES**

DATE: October 23, 2017

TIME: 8:30 a.m.

DEPT: 17

Reservation No.: 170922253266

27 The Defendants SILVERWOOD PROPERTIES, INC. ("SILVERWOOD") and
28 KENNETH HOWARD SHAPIRO ("SHAPIRO," who with SILVERWOOD, the Moving Parties"),
submit the following Reply to *PLAINTIFF'S OPPOSITION TO DEFENDANTS SILVERWOOD
PROPERTIES, INC. AND KENNETH HOWARD SHAPIRO'S MOTION TO STRIKE PUNITIVE
DAMAGES ALLEGATIONS* (the "Opposition").

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 As stated in Defendants' Motion to Strike:

4 "To establish malice, it is not sufficient to show only that the
5 defendant's conduct was negligent, grossly negligent or even
6 reckless. [*G. D. Searle & Co, supra*, 49 Cal.App.3d at 31-32.] That
7 is, the mere carelessness or ignorance of the defendant does not
8 justify the imposition of punitive damages, but instead, what is
9 required is 'conduct that rises to such a level of extreme indifference
10 that decent citizens should not tolerate it.'" [*Hughes v. Blue Cross*
11 (1989) 215 Cal. App.3d 832, 847.]

12 II. ARGUMENT AND AUTHORITY

13 A. THE OPPOSITION SHOULD NOT BE CONSIDERED AS IT WAS NOT
14 TIMELY SERVED

15 Plaintiff's Opposition was due to be served October 10, 2017. Plaintiff's Opposition was
16 served **October 12, 2017**, and was not received by Moving Parties until the morning of October 16,
17 2017, making the Reply due the same day.

18 B. PLAINTIFF'S COMPLAINT DOES NOT ADEQUATELY PLEAD
19 ULTIMATE FACTS TO SUPPORT AN ENTITLEMENT TO PUNITIVE DAMAGES.

20 In its Opposition, Plaintiff asserts that "General allegations that Defendant acted with fraud,
21 malice or oppression are sufficient to plead punitive damages, citing *Unruh v. Truck Ins. Exchange*
22 (1972) 7 Cal.3d 616, 632. The Unruh case has had **severe** negative treatment and should not be
23 cited as authority.

24 All of Plaintiff's allegations against Moving Parties are couched in terms of "...knew **or**
25 **should have known**. Moreover, in order to base punitive damages on something other than pure
26 evil motion, Plaintiff should at least plead facts demonstrating that Moving Parties **should have**
27 **known**.

28 Take the case of *Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, which

1 demonstrates the foundational facts to support the *should have known* basis for punitive damages.
2 *Angie* was an action for intentional infliction of emotional distress arising from alleged extended
3 sexual relationship between a minor and a 48-year-old medical doctor, who gained the minor's trust,
4 had knowledge of her dysfunctional family background and other vulnerabilities, and, as a
5 physician, *should have known* the minor was particularly susceptible to emotional harm.

6 From the allegations of the Complaint, it appears that Plaintiff's sole basis on which to
7 allege Moving Parties *should have known* is the familial relationship between Kenneth Shapiro and
8 his daughter, Cheny Adrienne Shapiro. Without more, such a relationship does not, in and of itself,
9 support Plaintiff's conclusionary allegations that Shapiro intentionally covered up defects and
10 intentionally failed to disclose them to the Plaintiff.


11 **III. CONCLUSION**

12 Plaintiff's allegations against Moving Parties is not "conduct that rises to such a level of
13 extreme indifference that decent citizens should not tolerate it" and should be stricken from the
14 Complaint.

15 Dated: October 16, 2017

CARLSON LAW GROUP, INC.

16
17 By:


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19 Warren K. Miller, Esq., Of Counsel
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21 PROPERTIES, INC. and KENNETH HOWARD
22 SHAPIRO
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David A. Glazer v. Cheney Adrienne Shapiro, et al.
LASC Case No.: BC669741

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